SUBMITTED

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 1035

MIDDLETON S. BORLAND, TRUSTEE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 28, 1935.

CERTIORARI GRANTED APRIL 15, 1935.

(21,966)

(31,050)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 1085

MIDDLETON S. BORLAND, TRUSTEE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 27, 1925

[fol. 1] **IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**

In Bankruptcy. No. 34996

In the Matter of OSCAR L. GUBELMAN, JAMES F. SHAW, ROLLIN C. NEWTON, HERBERT B. SMITHERS, JOHN R. HALL, MARY W. KNAUTH, and THEODORE W. KNAUTH, Trading as Copartners under the Firm Name and Style of Knauth, Nachod & Kuhne, and OSCAR L. GUBELMAN, JAMES F. SHAW, ROLLIN C. NEWTON, HERBERT B. SMITHERS, JOHN R. HALL, and THEODORE W. KNAUTH, Individually, Bankrupts

PROOF OF DEBT

At the City of Washington, in the District of Columbia, on the 1st day of April, A. D. 1924, came Harry S. New, Postmaster General of the United States of America, and made oath for and in behalf of the Government and the United States Post Office Department thereof, and says that the firm of Knauth, Nachod & Kuhne as a partnership and th emembers of said partnership individually, against whom a [fol. 2] petition for adjudication of bankruptcy has been filed, were at and before the filing of said petition and still are justly and truly indebted to the United States Government and to the Post Office Department thereof in the sum of One Hundred Forty-eight Thousand Four Hundred Three Dollars and two cents ($148,403.02), with interest thereon; that the consideration of said debt is as follows:

The purchase of bills of exchange and checks, photostatic copies of which are filed herewith and made a part hereof and marked exhibits 1 to 15, inclusive, together with a slip showing the date of purchase, amount, number, cost, also country to which bills and checks were to be sent, and protest fees, cable charges and interest, marked exhibit 16; that none of said bills and checks have been paid and that no part of said debt has been discharged; that there are no set-offs or counter-claims to the same, and that deponent has not nor has any person by his order or to his knowledge or belief, for the use of the Government, had or received any manner of security for said debt whatever. It is further alleged that this claim is entitled to preference according to the provisions of Section 3466 of the Revised Statutes of the United States.

Harry S. New, Postmaster General of the United States.

Subscribed and sworn to before me this 1st day of April A. D. 1924. Robert S. Regar, Notary Public. (Seal.) My commission expires August 28, 1927.

[fol. 3] EXHIBIT 2 TO PROOF OF DEBT

Knauth, Nachod & Kuhne

No. 96456. New York, May 29, 1923.

Pay to the order of Postmaster General of the United States $3,000.00 Three Thousand Dollars.

Knauth, Nachod & Kuhne.

(Endorsements omitted.)

EXHIBIT 12 TO PROOF OF DEBT

Knauth, Nachod & Kuhne

Levs. 1,156.00

No. 93174. New York, May 22, 1923.

Pay against this original check, (Duplicate unpaid) to the order of Postmaster General of United States the sum of Levs. one thousand one hundred and fifty-six.

To Banque Generale de Bulgarie, Sofia.

Knauth, Nachod & Kuhne, by E. Kuntze.

(Endorsements omitted.)

It is stipulated that Exhibits 1 to 15 inclusive, referred to in the proof of debt, are in the form of one or the other of the foregoing instruments.

Rosenberg & Ball, Attorneys for Appellant. Wm. Hayward, United States Attorney, Attorney for Appellee.

[fol. 4]

Exhibit 16 to Proof of Debt

On Money Order Account

Date purchased	Amount	Number	Cost	Sent to—	Protest fees, cable charges, interest, etc.
May 10, 1923.....	$290:11:00	89519	$1,338.71	Peru	$18.50
May 29, 1923.....	$3,000.00	96456	3,000.00	Trinidad	.....
May 29, 1923.....	$417.35	96457	417.35	Dominica	.....
May 29, 1923.....	$146.92	96458	146.92	Virgin Is.....	1.40
June 6, 1923.....	£25,000:00:00	90811	115,703.12	Gt. Britain.....	.....
June 6, 1923.....	Frs. 150,000	90833	9,746.25	France	.....
June 6, 1923.....	Kr. 50,000	90834	9,150.00	Denmark	.....
June 9, 1923.....	Frs. 100,000	93448	6,422.50	France	.....

On Postal Account

Apr. 30, 1923.....	Marks 557,846	89159	18.13	Danzig	.....
Apr. 30, 1923.....	Esc. 434.00	89160	19.30	Portugal	.....
Apr. 30, 1923.....	$1,395.48	96012	1,395.48	Spain	.....
May 22, 1923.....	Levas 1,156.00	93174	9.65	Bulgaria	.....
May 22, 1923.....	£41:5:11	93175	191.61	Dominica	.....
May 24, 1923.....	$361.02	96390	361.02	Draft on N. Y.....	.....
June 9, 1923.....	$462.78	96641	462.78	Draft on N. Y.....	.....
			$148,382.82		20.20

[fol. 5] IN UNITED STATES DISTRICT COURT

[Title omitted]

OBJECTION TO PROOF OF DEBT

To Robert P. Stephenson, Esq., referee in bankruptcy:

I, Middleton S. Borland, Trustee in this proceeding, do hereby object to the proof of debt filed on the 19th day of May, 1924, by the Postmaster General of the United States on behalf of the Government and the United States Post Office Department thereof, an alleged creditor for $148,403.02.

Said objection is made on the following grounds:

1. The amount claimed is in excess of the amount owing to the alleged creditor, the correct amount being $147,443.52.

2. Priority is claimed to which the alleged creditor is not entitled.

Dated, June 19, 1924.

Middleton S. Borland, Trustee in Bankruptcy.

[fol. 6] Sworn to by Middleton S. Borland; omitted in printing.

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

Hearing on Objections to the Claim of the U. S. Government

32 Broadway, New York City,
January 12th, 1925—10:30 a. m.

Proceeded pursuant to notice.

Messrs. Rosenberg & Ball, Attorneys for the Trustee, by Ralph F. Colin, Esq., of Counsel.

William Hayward, Esq., United States Attorney, Represented by John M. Ryan, Esq., Special Assistant to the U. S. Attorney, and Edward M. Blessing, Esq., Solicitor of the Post Office Department, of Counsel.

ARGUMENT OF COUNSEL

Mr. Colin: This is an objection, your Honor, to the claim of the Postmaster-General of the United States filed for $148,403.02.

[fol. 8] The objection by the Trustee is based on two facts: First, a small discrepancy as to the amount of the claim due to a different procedure adopted by the Trustee in calculating foreign exchange rates and, second, as to the priority feature of the claim.

At Mr. Ryan's request I supplied him with the details of the method of calculation used by the Trustee and we had some hopes

of being able to dispose of that end of the question by stipulation. Has that reached any conclusion, Mr. Ryan?

Mr. Ryan: No. The rates as furnished me are absolutely correct. I have been furnished with the rate as of the date of the filing of the petition in bankruptcy and I understand that your Honor has ruled that that is the day as of which to fix the rate of exchange. I can't find anything to the contrary but I would rather have your Honor rule without a stipulation so that there will be a formal record that I have not consented, and I will try to supply further data later.

Mr. Colin: Do I understand that you want me to prove the rates?

Mr. Ryan: No, the rates are absolutely correct, as of the date of the filing of the petition in bankruptcy.

Mr. Colin: May I then just put this on the record, that if the rate as of the date of the filing of the petition in bankruptcy is the proper rate, the proper amount of the claim should be $147,443.52.

Mr. Ryan: With the exception that we still claim this small item of $18.80 expenses for protest fees and we will furnish you with a certificate of the Postmaster-General showing how that amount was expended.

[fol. 9] Mr. Colin: In order to simplify the record I am willing to allow the protest fees.

It is stipulated that the claim, if allowed on the basis of the trustee's calculations, should be allowed in the amount of $147,462.32.

The Referee: Does that include the $18.80?

Mr. Colin: Yes. That leaves open for your Honor to decide two questions, first, whether the rate used by the Trustee is the proper one——

The Referee: How does the proof of claim read?

Mr. Ryan: For the record, perhaps we might inform his Honor exactly how the claim arises.

As you already know, the Post Office Department issues foreign money orders and, of course, the foreign countries issue orders on this country and at certain times there is an accounting and a balance struck. That is what happened in this case, a balance was struck.

Now the practice has been for the Postmaster-General to purchase drafts with which to pay the balances and in this case he went to Knauth, Nachod & Kuhne and purchased these drafts—the drafts are payable to the Postmaster-General and he endorses them to the different countries. That is how the claim arises; these are the balances due on money order accounts, and when the rate of exchange was figured for the proof of claim, the rate was figured as of the date of the purchases of these drafts. They were purchased on different dates beginning in May, 1923, and ending on June 9th, 1923.

I might state that the statement furnished me by the Trustee in bankruptcy shows that in certain cases the rates are higher, or were higher on the day the petition in bankruptcy was filed than on the [fol. 10] day on which the drafts were purchased.

Mr. Colin: I may say, your Honor, that we are simply raising this question in order not to have a precedent against us. The whole

difference on the claim is about a thousand dollars, but we don't want to waive the question; we want to keep the practice uniform.

The Referee: I have ruled before, Mr. Ryan, in these cases, that the filing of the petition in bankruptcy is a breach of the contract—the Supreme Court has held that—and it is the damages which are suffered at that time. That is the reason I ruled that it is the rates applying at that time rather than at the time of the purchase. On that theory I rule against you and allow the claim for $147,462.32 and I will hear argument on whether it is to be a priority claim.

(Then followed oral argument.)

Hearing closed.

Decision reserved.

[fol. 11] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION OF REFEREE—January 21, 1925

Proof of claim filed by the Postmaster-General, claiming $148,403.02, being the total amounts paid by the Postmaster-General for drafts on foreign countries, issued by the Bankrupts, together with protest fees and cable charges.

Priority is claimed under Section 64b(5) of the Bankruptcy Act and Section 3466 of the Revised Statutes. The Trustee objects to [fol. 12] the amount of the claim as based upon the amounts paid for the drafts, but admits there is a valid claim for $147,462.32. This, as admitted, was the value of the foreign drafts on the date of the bankruptcy, June 15, 1923. The Trustee further objects to its being a priority claim.

William Hayward, Esq., United States Attorney.

John M. Ryan, Esq., United States Ass't Attorney, of Counsel for the claimant.

Rosenberg & Ball, Esqs., for the trustee.

STEPHENSON, Referee:

The amount of the claim should be reduced to $147,462.32, as this was the value of the drafts purchased by the claimant at the time of the breach.

On the question of priority, the decisions are in conflict. Davis vs. Pringle, 1 F. (2d) 860 (C. C. A.—4th—September 29, 1924) holds that the Government is not entitled to priority. In re Tidewater Coal Exchange, 280 Fed. 648, (C. C. A.—2nd) holds that the United States is entitled to priority. In my opinion, the United States is entitled to priority for these reasons:

The Bankruptcy Act of 1898 was intended to cover completely all matters of adjudication, administration, discharge, priorities and

distribution of assets, and it supplanted any previous inconsistent statutes. (Guaranty Company vs. Title Guaranty Company, 224 U. S. 152). Under Section 64b, the order of priority is specified. It includes administration expenses, wages, and next "(5) debts owing to any person, who, by the laws of the States or the United States is entitled to priority." Under a law of the United States (Revised Statutes—Section 3466), the United States is given priority [fol. 13] in bankrupt estates. If, therefore, the word "person" in Section 64b(5) of the Bankruptcy Act includes the United States, it is entitled to priority.

"Person" is defined as follows: "'Persons' shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations"; and Section 1a of the Act provides "The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows." The word "person" must, therefore, be construed as defined unless inconsistent with the context. Resort, therefore, should not be had to the history of bankruptcy legislation or to the proceedings of Congress leading to its enactment, for this takes one beyond the context of the Act and into fields of investigation to which Courts should not venture except in cases where the meaning is clearly uncertain. There is nothing in the context of the Bankruptcy Act to limit the meaning of the word "person" under Section 64b(5) to either natural persons or private corporations. In my opinion, it therefore includes the United States which is a corporation sovereign. Although the sovereign is not bound by statutes (unless expressly named) which diminish his rights, he is included (although not expressly named) in statutes which confer rights. (Stanley vs. Schwabley, 147 U. S. 508). In that case it was held [fol. 14] that the United States was a "person" who could plead the Statute of Limitations though it was not bound by such Statute.

The decision in Davis vs. Pringle, supra, is based upon a sentence in the concurring part of a dissenting opinion, and upon the Court's deductions from an examination of previous bankruptcy legislation and the proceedings in Congress which led to the present Act. In construing the word "person" in an Act where the meaning of that word is defined, I do not believe the previous legislation and the proceedings of Congress are helpful.

Settle order on notice, allowing the claim for $147,462.32, and granting a priority subsequent to the priorities of taxes, administration expenses and wages.

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF REFEREE—January 27, 1925

On the proof of debt filed herein by the United States Government through the Post Master General thereof, Harry S. New, Esq., verified the first day of April, 1924, the objection to said claim by Middleton S. Borland, Esq., Trustee in Bankruptcy herein, verified the nineteenth day of January, 1925, and the notice of hearing on said objection, and on the evidence offered herein with respect to the [fol. 16] amount of said claim, and after hearing Ralph F. Colin, Esq., of counsel for the Trustee, in support of said objection and John M. Ryan, Esq., of counsel for the United States Government in opposition thereto, it is now, after due consideration and on motion of William Hayward, Esq., United States attorney for the Southern District of New York.

Ordered that the claim of the United States Government through its Post Master General be and the same hereby is allowed in the amount of $147,462.32 as a priority claim against the estate of Knauth, Nachod & Kuhne, one of the above named bankrupts, to be paid subsequent to the payment of taxes, administration expenses and wage claims as provided for in Section 64a and in subdivisions (1), (2), (3), and (4) of Section 64b of the Bankruptcy Act of 1898.

Robert P. Stephenson, Referee in Bankruptcy.

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF TRUSTEE TO REVIEW

To the Honorable Robert P. Stephenson, referee in bankruptcy:

The petition of George G. Ernst respectfully shows:

1. Your petitioner is a member of the firm of Rosenberg & Ball, attorneys for Middleton S. Borland, Trustee herein. This petition is made by your petitioner and not by the Trustee in person because of the fact that the Trustee is ill and away from his office.

[fol. 18] 2. In the course of the proceedings and on the 27th day of January, 1925, an order, a copy of which is hereto annexed, was made and entered herein.

3. Such order was and is erroneous in that it allows the claim of the United States Government through its Post Master General in the amount of $147,462.32, filed herein, as a priority claim against

the estate of Knauth, Nachod & Kuhne, one of the bankrupts above named.

Wherefore your petitioner, on behalf of the Trustee in Bankruptcy, feeling aggrieved because of such order, prays that the same may be reviewed as provided in the Bankruptcy Act of 1898 and General Order No. XXVII.

Dated, New York, January 27th, 1925.

George G. Ernst, Petitioner.

Sworn to by Geo. G. Ernst, Jurat omitted in printing.

[fols. 19 & 20] Order of Referee—Omitted; printed side page 15 ante

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[fol. 21] In United States District Court

[Title omitted]

Referee's Certificate

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

I, Robert P. Stephenson, Referee in charge of the above entitled matter, pursuant to the petition to review herein, hereby certify the following papers:

[fol. 22] (1) Petition to review of George G. Ernst, on behalf of the Trustee in Bankruptcy herein, verified January 27, 1925.

(2) Order of the Referee, dated January 27, 1925, to be reviewed by said petition.

(3) Proof of claim of the Postmaster General of the United States, verified by Harry S. New on April 1, 1924.

(4) Objection to the proof of claim made by the Trustee, dated June 19, 1924.

(5) Opinion of the Referee, dated January 21, 1925, reducing the claim, and granting the priority.

(6) Record of the proceedings at the hearing on the objection to the claim.

Dated, January 30, 1925.

Robert P. Stephenson, Referee in Bankruptcy.

[fol. 23] IN UNITED STATES DISTRICT COURT

MEMORANDUM OF A. N. HAND, J., ON AFFIRMING REFEREE'S ORDER

HAND, J.:

Report affirmed on authority of Tidewater Coal Exchange, 280 Fed., 648.

[fol. 24] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—February 4, 1925

This cause having come on to be heard on January 31, 1925, upon the petition of the Trustee herein to review the order of the Referee in Bankruptcy dated January 27, 1925, allowing a claim in favor of the United States of America in the sum of $147,462.32, as a priority claim, as in said order set forth, after hearing counsel, it is

Ordered and decreed that the order of the Referee, dated January [fol. 25] 27, 1925, be and the same hereby is in all respects affirmed and the aforesaid petition to review the said order be and the same hereby is dismissed.

Further ordered and decreed that the claim of the United States of America through its Postmaster General be and the same hereby is allowed in the amount of $147,462.32, as a priority claim against the estate of Knauth, Nachod & Kuhne, one of the above named bankrupts, to be paid subsequent to the payment of taxes, administration expenses, and wage claims, as provided for in Section 64(a) and in Subdivisions 1, 2, 3, and 4, of Section 64(b) of the Bankruptcy Act of 1898.

Dated, New York, February 4, 1925.

Augustus N. Hand, U. S. D. J.

No objection as to form. Wm. Hayward, U. S. Atty., Atty. for U. S. Claimant.

[fol. 26] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—February 4, 1925

To the United States District Court for the Southern District of New York:

Middleton S. Borland, Esq., as Trustee in Bankruptcy of the above named bankrupt Knauth, Nachod & Kuhne, respectfully shows that

on February 4th, 1925, an order and decree were made in the United States District Court for the Southern District of New York affirming an order of the Referee in Bankruptcy dated January 27, 1925, [fol. 27] allowing the claim of the United States of America through its Postmaster General in the amount of $147,462.32, as a priority claim, as against the estate of Knauth, Nachod & Kuhne, to be paid subsequent to the payment of taxes, administration expenses and wage claims, as provided for in Section 64(a) and in Subdivisions 1, 2, 3, and 4 of Section 64(b) of the Bankruptcy Act of 1898.

Said Middleton S. Borland, as Trustee aforesaid, the petitioner herein, deeming himself aggrieved by the said order and decree hereby appeals from the said order and decree to the United States Circuit Court of Appeals for the Second Circuit, for the reason specified in the assignment of errors filed herewith.

And your petitioner prays that he may be allowed an appeal herein and that a transcript of the record, proceedings and papers in said proceeding, duly authenticated, may be transmitted to the said Circuit Court of Appeals.

Dated New York, February 4, 1925.

Rosenberg & Ball, Attorneys for Trustee.

Office & P. O. Address, 74 Broadway, Borough of Manhattan, City of New York.

It is ordered that the appeal, as above prayed for, be allowed.

Augustus N. Hand, U. S. D. J.

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Middleton S. Borland, as Trustee in Bankruptcy of the above named bankrupt Knauth, Nachod & Kuhne, by Rosenberg & Ball, his attorneys, assigns the following errors of the District Court upon his appeal to the Circuit Court of Appeals for the Second Circuit from the order and decree of said District Court, dated February, 4, 1925:

[fol. 29] (1) The District Court erred in affirming the order of the Special Master allowing the claims of the United States of America through its Postmaster General as a priority claim.

(2) The District Court erred in holding that the United States of America was entitled to priority in payment of its said claim filed through its Postmaster General over the claims of the general creditors of the said bankrupt Knauth, Nachod & Kuhne.

Dated New York, February 4, 1925.

Rosenberg & Ball, Attorneys for Trustee.

Office and P. O. Address, 74 Broadway, New York City.

[fol. 30] CITATION—In usual form; omitted in printing

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed that the foregoing is a true [fol. 32] transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated New York, February 18th, 1925.

Rosenberg & Ball, Attorneys for Appellant. William Hayward, United States Attorney, Attorney for Appellee.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United [fol. 34] States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 18th day of February in the year of our Lord one thousand nine hundred and twenty-five and of the Independence of the said United States the one hundred and forty-ninth.

Alex. Gilchrist, Jr., Clerk. (Seal.)

[fol. 35] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

In the Matter of OSCAR L. GUBELMAN et al., Trading as Copartners under the Firm Name and Style of Knauth, Nachod & Kuhne, etc., Bankrupts; MIDDLETON S. BORLAND, Trustee in Bankruptcy, Appellant; UNITED STATES OF AMERICA, Appellee.

Before Rogers, Hough, and Hand, Circuit Judges

Rosenberg & Ball, for trustees; Godfrey Goldmark, George G. Ernst, of counsel.

Emory R. Buckner, United States Attorney, for appellee; John M. Ryan, Special Assistant United States Attorney, of counsel.

OPINION

Per CURIAM:

Order affirmed on the authority of In re Tidewater Coal Exchange, 280 Fed. 648.

[fols. 36 & 37] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—April 13, 1925

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. W. R.
C. M. H.

[fol. 38] IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 37 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of In the Matter of Oscar L. Gubelman, et al., trading as copartners under the firm name and style of Knauth, Nachod & Kuhne, etc., Bankrupts, Middleton S. Borland, Trustee in Bankruptcy, Appellant, United States of America, Appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 14th day of April in the year of our Lord One Thousand Nine Hundred and twenty five and of the Independence of the said United States the One Hundred and forty ninth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals Second Circuit.)

[fol. 39] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 27, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

It is further ordered that this cause be, and the same is hereby, advanced and assigned for argument with cases Nos. 786 and 787 heretofore assigned for Monday, May 4th next. The case to be submitted on printed briefs on that date, with the alternative to counsel to present this case on oral argument on Monday November 2d next, after the cases heretofore assigned for that day.